Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 10-90
Connect America Fund	)	

EX PARTE COMMUNICATION OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ON RATE OF RETURN STAFF REPORT

The National Association of State Utility Consumer Advocates ("NASUCA") provides this brief ex parte communication to address some of the comments filed in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice on the authorized rate-of-return ("RoR") for incumbent local exchange carriers ("ILECs").[1]

NASUCA's comments focused on two points:

- Given the many years since the RoR was set at 11.25% – and the concomitant amount of time that the authorized RoR has been too high – Staff's recommendation to use the upper half of its range of reasonableness is itself unreasonable. The lower half of the range – indeed, the bottom point of the range (7.39%) should be used.

- Staff's description of the purposes of the authorized RoR – as used only for "roughly 1200 [ILEC] study areas subject to rate-of-return regulation… to determine interstate common line rates and special access rates for rate-of-return incumbent LECs and is also used in calculating some forms of support provided by the Universal Service Fund…." is short-sighted. Given the substantial lowering of the authorized RoR, the RoRs used in setting unbundled network element ("UNE") rates for larger carriers, and also used in setting rate caps and determining exogenous changes for price cap carriers, should be re-examined, to

[1] DA 13-1111 (rel. May 16, 2011) ("Staff Report").

lower customers' rates.[2]

Ad Hoc agrees with NASUCA's first point.[3]

By contrast, but understandably, the rural carriers, rural associations, their representatives and consultants argue that the FCC's authorized RoR, set somewhat more than twenty years ago, should not be decreased; rather it should be increased. Although NASUCA sincerely respects the role of the RoR ILECs in serving customers, the Universal Service Fund ("USF") must strike a balance between the needs of the customers of the RoR ILECs[4] and the consumers nationwide who pay into the USF. Thus NASUCA offers the following perspectives.

- JSI urges the Commission to delay dealing with RoR until other unresolved matters from the USF/ICC Orders re addressed and the industry has had time to "absorb" the changes from those Orders.[5] The Commission's regulations are a complex web – and the environment is constantly changing – so waiting on one element until all elements are reviewed is not really an option.[6]
- The Moss Adams Companies "urge the Commission to carefully consider the implications that a significant reduction in the authorized rate of return would have on rural rate of return carriers. These Carriers of Last Resort (COLRs) are responsible for delivering universal voice and broadband services to the most remote, sparsely populated and highest cost to serve areas of the country. No

[2] NASUCA Comments at 2 (footnotes omitted).

[3] Ad Hoc Comments at 8.

[4] After all, the purpose of the USF is to benefit customers rather than competitors. *Alenco Communications, Inc. v FCC*, 201 F.3d 608, 620 (5th Cir. 2000). Regardless of the level of competition in the RoR ILECs' areas, the USF must benefit customers rather than carriers.

[5] JSI Comments at 1-2.

[6] Other neglected issues are, in NASUCA's view, even more important for early decision, such as the separations conundrum and the designation of IP services as telecommunications services.

other carrier has this same obligation…."[7] This is true… but no other carrier receives USF high-cost support. The question is, how much support is enough?

- Moss Adams Companies also note that the RoR ILECs business plans "were developed, approved and funded" using the 11.25% RoR.[8] The rural RoR ILECs have relied on the 11.25% return for more than twenty years, but the FCC never promised it would be perpetual.
- GVNW asserts that "it seems intuitively obvious that the Commission must follow the United States Supreme Court's established legal precedents for determining a fair rate of return for ratemaking purposes"[9] NASUCA begs to differ: The complications of the USF (and the other isses mentioned in NASUCA's initial comments[10]) for which RoR prescription is needed, are not ratemaking.
- Various commenters assert that a reduction in the authorized RoR, which will reduce the USF payments to these ILECs, will "have a major impact on the financial results" of the RoR ILECs.[11] Such impacts must be gauged in the context of whether the reduction would impair the ability of these ILECs to carry out their COLR obligations.[12] This has not been shown.

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[7] Moss Adams Companies Comments at 5.

[8] Id. at 9.

[9] GVNW Replty Comments at 3.

[10] NASUCA Comments at .

[11] E.g., Moss Adams Companies at 6; see also JSI Comments at 5-6; ARC Comments at 2.

[12] See footnote 4. This also implicates interstate and intrastate relationships. The COLR obligation has both federal and state implications.

- Overall, assessments of the risks of the current environment[13] fail to recognize ways in which risk has decreased.[14] That is why a proxy method like that used by FCC staff, which includes assessment of the risks experienced by carriers that do not have a guaranteed return, is a reasonable approach to represcription.[15]
- As far as specific criticisms of the FCC's methodology are concerned,[16] Ad Hoc addresses many of them.[17]
- And the FCC's criticisms of the only real alternative suggested – the Rural Association's Free Cash Flow ("FCF") method – were hardly "minor."[18]
- Some try to play the numbers game, asserting that because only two out of the fourteen filed comments supported lowering the authorized RoR, there is something more correct in the majority view.[19] But the comments making up that majority are all from rural carriers, rural associations, their representatives and consultants,[20] all of whose focus is keeping their USF revenue stream as high as possible.[21]

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[13] Moss Adams Companies at 10; Rural Company Group Comments at iii.v; GVNW Reply Comments at 4. .

[14] See JSI Comments at 5; OTA/WITA Comments at 1. Similarly, the Associations (at 3) cite the increase in competition since the last represcription, but fail to note that competition hit the larger carriers earlier and more deeply. See also id. at 4. See also ACS Comments at 3

[15] See Rural Associations Comments at 2.

[16] E.g., Associations Comments at3-4 2; JSI Comments at 2; Moss Adams Companies at 8, 9; FWA Reply Comments. .

[17] Ad Hoc Comments at 1-7.

[18] Associations Comments at 5.

[19] State Associations Comments at 1; TCA Comments at 1. NASUCA would point the Commission to Ad Hoc's Reply Comments for an incisive review of the RoR ILECs' positions.

[20] "TCA is a national consulting firm that performs financial, regulatory and marketing services for over one-hundred LECs and their affiliates." TCA Comments at 1.

[21] Reply Comments were also filed by AT&T.

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